

North Shore Gas Company and
The Peoples Gas Light and Coke Company

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Petition pursuant to Section 8-104 of the
Public Utilities Act to Submit an Energy
Efficiency Plan.

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief (“RB”) in the instant proceeding.

Initial Briefs (“IB”) were filed on February 25, 2014 by the North Shore Gas Company and the Peoples Gas Light and Coke Company (together, “Companies”), Staff, the Environmental Law and Policy Center (“ELPC”), the People of the State of Illinois (“AG”), and the Citizens Utility Board (“CUB”) and the City of Chicago (“City”) (together, “CUB/City”). Staff’s IB identified and responded to many if not most of the arguments raised in the IBs. In this Reply Brief, Staff has incorporated many of those

responses by reference or citation to Staff's IB. However, in the interest of brevity, Staff has not raised and repeated every argument and response previously addressed in Staff's IB. Thus, any omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's IB because further or additional comment is neither needed nor warranted.

II. MODIFIED ILLINOIS NET-TO-GROSS FRAMEWORK

ELPC proposes that the Commission adopt its NTG Framework (ELPC Ex. 1.2), which is similar to Staff's NTG Framework (Staff Ex. 1.1) except for the voting parties provision. (ELPC IB, 14-15.) In direct testimony, Staff addressed the ELPC's concern with respect to voting parties by recommending that the Commission order the Companies to include provisions within their contracts with their implementers that expressly prohibit the contractors and any of their subcontractors from obstructing the consensus seeking IL-TRM and NTG Update processes. (Staff Ex. 1.0, 37.) No party opposed this recommendation and Staff believes this solution addresses the ELPC's concerns regarding voting parties.

For the reasons expressed in Staff's testimony, Staff's NTG Framework proposal is preferable to the ELPC's proposal. (Staff Ex. 3.0, 9-12.) The key difference between the ELPC and Staff NTG Framework proposals relates to the issue of voting parties. It is important to note that the Commission recently rejected the ELPC's proposal related to voting parties in Docket No. 13-0499, stating: "The Commission notes that ELPC did not address the voting at SAG proposal in its brief. Regardless, the Commission does not agree with this proposal." Illinois Dept. of Commerce and Economic Opportunity,

ICC Order Docket No. 13-0499, 23 (Jan. 28, 2014). The Commission should again reject the proposal to create voting parties at the SAG. (ELPC IB, 15; Staff Ex. 3.0, 9-12.) Instead, the Commission should order the Companies to include provisions within their contracts with their implementers that expressly prohibit the contractors and any of their subcontractors from obstructing the consensus seeking IL-TRM and NTG Update processes. (Staff Ex. 1.0, 37.)

The AG proposes that the NTG Framework adopted in Docket No. 13-0498 be adopted for the Companies. (AG IB, 41.) The Companies propose that the NTG Framework adopted in Docket No. 13-0495 be adopted for the Companies with some of the additional conditions recommended by Staff. (NS-PGL IB, 30-32.) Neither of these frameworks should be adopted because neither creates the incentives to encourage all parties to reach consensus on the best estimate of future NTG ratio ("NTGR") values to deem. Only the ELPC NTG Framework (ELPC Ex. 1.2) and the Staff NTG Framework (Staff Ex. 1.1) create these important incentives that will reduce litigation in future energy savings goals compliance proceedings. Specifically, the inclusion of the provision concerning partially retroactive application in the case of non-consensus NTG ratio values provides a reasonable and appropriate incentive for all parties to reach consensus on a best estimate of future NTGR values. (Staff IB, 19.) Under the NTG frameworks supported by both the AG and the Companies, the evaluator has no incentive to modify its initial NTG recommendation unless there is consensus. This effectively means that the Companies have no incentive to negotiate in good faith on any NTG ratio that would lower the evaluator's recommended NTG ratio with the AG or the Companies' NTG Frameworks. Staff notes that adoption of an adjustable savings

goal approach helps mitigate this disincentive. (Staff Ex. 1.0, 27.) Absent Commission adoption of the Companies' adjustable savings goal proposal, the Companies will have an incentive to oppose updates to NTG ratio values that reduce savings attributable to energy efficiency measures as those updates would make it more challenging for the Companies to meet the energy savings goals forecasted in the Plan filing. Further, since the NTG ratio values the evaluator recommends under the AG and the Companies' NTG Frameworks impacts whether the Companies meet statutory energy savings goals, this could create an incentive for the Companies to pressure evaluators to provide high NTG ratio values and any deviation from the evaluator's initial NTG ratio recommendation could be perceived by some parties as not being "independent." (Staff IB, 19-20.) To help mitigate the risk of compromising the independence of the evaluators who will face a lot of pressure under the AG and the Companies' NTG Frameworks, the Commission should incentivize parties to reach consensus at the SAG to be an important component of the NTG update process, consistent with SAG's consensus-seeking role in the existing Commission-approved IL-TRM Update Process. (Staff Ex. 1.4, 8.) Requiring consensus at the SAG for NTG updates would work well as evidenced by all of the last three IL-TRM Updates being consensus in nature. (Staff Ex. 1.0, 35-36.)

While Staff believes the ELPC's NTG Framework (ELPC Ex. 1.2) has flaws and is inferior to the Staff's NTG Framework (Staff Ex. 1.1) for the reasons set forth in testimony (Staff Ex. 3.0, 9-12), ELPC's NTG Framework is at the same time much superior to both the Companies' NTG Framework and the AG's NTG Framework (AG IB, 41).

III. CONSISTENT IL-NTG METHODS

The Commission should require that consistent statewide net savings methodologies be used in the evaluations of comparable energy efficiency programs offered by the Illinois utilities and DCEO. (Staff IB, 24-28.) The Companies state for the first time in their IB that they disagree with Staff's proposal concerning statewide NTG methodologies. (NS-PGL IB, 33-34.) The Companies claim that the evaluators have determined what best practices are and should be applying them. Id. As noted in Staff's testimony, there exist great inconsistencies across the different utilities in the methodologies used to evaluate NTG in comparable programs. (Staff Ex. 1.0, 38-45.) Thus, it is clear that best practices are subjective and different utilities are playing by different evaluation rules, which is contrary to the Commission's Order in the Utilities' last Plan docket. In the Companies' last Plan docket, the Commission recommended that transparent and consistent methods for determining electricity and natural gas savings should be established. North Shore Gas Co. and Peoples Gas Light and Coke Co., ICC Order Docket No. 10-0564, 76 (May 24, 2011) ("Plan 1 Order").. The Commission emphasized that "it is critical that both gas and electric utilities are required to play by the same rules and assumptions." Id. For the reasons set forth in this proceeding, the Commission should require consistent statewide net savings methodologies be used in the evaluations of comparable energy efficiency programs offered by the Illinois utilities and DCEO. (Staff IB, 24-28.) The Commission should direct the Companies to require their evaluators to collaborate with the other Illinois evaluators and the SAG to reach consensus on the most defensible and well-vetted methodologies to assessing net-to-gross ratios in particular markets for both residential

and non-residential energy efficiency programs in a manner consistent with the direction provided in Staff's IB. Id. Further, the Commission should direct ICC Staff to file the agreed-upon consensus statewide NTG methodologies with the Commission as an appendix to the Updated IL-TRM. If consensus is not reached on a certain component of the statewide NTG methodologies, then that particular non-consensus component should be submitted in a manner consistent with the approach used for non-consensus IL-TRM Updates. It is efficient, transparent, and reasonable to keep the Commission-adopted gross savings methodologies (IL-TRM) and net savings methodologies (IL-NTG Methods) together.

IV. PORTFOLIO FLEXIBILITY, COST-EFFECTIVENESS, AND REPORTING

The Commission should adopt Staff's recommendations concerning flexibility, cost-effectiveness, and reporting as described in Staff's IB. (Staff IB, 11-14.) The Companies support Commission adoption of Staff's recommendations in this regard. (NS-PGL IB, 24-26.) Staff also supports the previous flexibility provisions regarding SAG notification of 20% budget shifts to remain in place as described in the CUB/City IB. (Plan 1 Order, 91-92; CUB/City IB, 13.) However, the Commission should ignore the CUB/City's criticism of Staff's position as without merit. As explained in testimony, if the Commission does not adopt Staff's recommendations concerning portfolio flexibility and reporting, then the Commission should reject the Companies' request for adjustable savings goals. (Staff Ex. 1.0, 25.)

CUB/City appears to misinterpret Staff's recommendations concerning portfolio flexibility. (CUB/City IB, 14-15.) CUB/City argues that Staff is requesting "the

Commission to establish the minimum cost-effectiveness requirement at the measure level, which would be measured through the Plan period.” (CUB/City IB, 14.) To the contrary, Staff witness Ms. Hinman’s testimony states:

The addition of a cost-ineffective measure also serves to reduce net benefits to ratepayers which makes it more difficult for the policy objectives set forth in the energy efficiency statute to be realized (i.e., direct and indirect costs to consumers will be reduced through investment in cost-effective energy efficiency measures). Thus, even if the addition of cost-ineffective measures during the Plan implementation does not make the entire portfolio cost-ineffective, the implementation of cost-ineffective measures still serves to erode net benefits to ratepayers.

I acknowledge there may be certain extenuating circumstances in which it may be appropriate to include certain cost-ineffective measures in the Plan. However, unlimited promotion of such measures should not be permitted. Certain limitations on implementing cost-ineffective measures are necessary and appropriate. If evidence exists that inclusion of an energy efficiency measure in the Plan is both cost-ineffective and unlikely to serve some higher goal of establishing longer term, cost-effective, robust efficiency savings, that energy efficiency measure should be excluded.

(Staff Ex. 1.0, 20.) As Ms. Hinman’s testimony clearly demonstrates, far from establishing a “minimum cost-effectiveness requirement at the measure level,” Staff explicitly accepts the inclusion of cost-ineffective measures where these serve energy efficiency goals. Staff’s concern is simply with ensuring that unlimited promotion of cost-ineffective measures does not occur during the Plan because this would serve to erode net benefits for ratepayers. Accordingly, the CUB/City’s characterization of Staff’s position is without merit and should be ignored.

CUB/City also misapplies the Commission’s findings in Docket No. 11-0341 Order. (CUB/City IB, 17.) CUB/City states that “the Commission confirmed in ICC Docket Number 11-0341 that measures are not to be terminated simply because they might be cost-ineffective throughout a program year or Plan period.” (CUB/City IB, 17.)

Nowhere in that Order does it state that cost-ineffective measures should not be terminated. The Commission simply affirmed that Ameren's actions in modifying the SB HVAC program, which initial TRC values indicated was not cost effective, to ensure that the program would be cost-effective over the three year period were prudent. Ameren Illinois Co., ICC Order Docket No. 11-0341, 48 (Oct. 2, 2013). Thus, far from supporting CUB/City's assertion, the Order in Docket No. 11-0341 actually supports Staff's position that reasonable steps should be taken to prevent the unlimited promotion of cost-ineffective measures.

CUB/City argues that Staff's references to the MidAmerican Energy Company ("MidAmerican") case are irrelevant because MidAmerican operates under a different statutory provision than the Companies. (CUB/City IB, 15.) Staff agrees that MidAmerican operates under Section 8-408 of the Act while the Companies operate under Section 8-104 of the Act. Nevertheless, the argument that Staff made concerning the MidAmerican case is relevant. In particular, Staff pointed out that even though the statute (Section 8-408) requires as a minimum requirement that an energy efficiency program must be cost-effective in order to be approved by the Commission, for the benefit of ratepayers the Commission imposed a more stringent requirement than that and required that each energy efficiency measure must be cost-effective subject to extenuating circumstances not being shown in the plan filing. Similarly, even though Section 8-104(f)(5) specifies a minimum requirement of Plan approval is that the entire portfolio has to be cost-effective, for the benefit of ratepayers, the Commission can impose a more stringent requirement than that in this proceeding and require that each energy efficiency measure and program must be cost-effective subject to extenuating

circumstances not being shown in the plan filing. The Companies and the AG agree that since the Companies are no longer proposing to meet the statutory savings goals, it does not make sense for them to promote measures and programs that produce negative net benefits to ratepayers (i.e., cost-ineffective) unless extenuating circumstances can be shown. (NS-PGL IB, 23; NS-PGL Ex. 3.0, 18-19.) The Commission should approve of this approach and adopt the Companies' reasonable proposal to make changes in the Compliance Filing where, for the benefit of ratepayers, cost-ineffective energy efficiency measures (those with TRCs of less than 1.0) will only be implemented if there is a compelling reason. (NS-PGL Ex. 3.0, 19.) Therefore, the Commission should require each program or measure be cost effective in this plan filing, unless extenuating circumstance can be shown to warrant inclusion of such program or measure. (Staff Ex. 1.0, 24.)

V. EXPAND JOINT OFFERINGS FOR MULTI-FAMILY RESIDENTIAL CUSTOMERS

CUB recommends that the Commission direct the Companies to expand the Multi-family program because the Companies' proposed program is inadequate as it assumes unreasonably low participation levels. (CUB/City IB, 20.) Staff agrees that greater participation could be achieved in the Multi-family program if the program itself is expanded in coordination with Commonwealth Edison Company ("ComEd"). Staff believes the jointly delivered Multi-family program could be expanded by the Companies because the Commission has recently directed that \$37,088,416 be shifted from ComEd's Residential Lighting program to other residential programs, including jointly

delivered programs with the Companies, over the time period covering the Companies' PY5 and PY6. Commonwealth Edison Co., ICC Order Docket No. 13-0495, 88-89 (Jan. 28, 2014). Since ComEd only offers electric service, ComEd is reliant upon Nicor Gas and the Companies to ensure the joint programs offer gas energy efficiency measures and associated benefits to customers. (NS-PGL Ex. 1.0R, 9, 14.) The sizes of these joint residential programs are determined by the gas utilities' comparatively limited budgets. Id. The Commission could increase net benefits to both ComEd and the Companies' ratepayers by directing the Companies' funding from the cost-ineffective measures (that the Companies agree should be shifted) toward the cost-effective joint residential programs the Companies propose to offer with ComEd. (NS-PGL IB, 23.) The Companies state they will continue to coordinate with ComEd for the delivery of measures and programs within Plan 2, where such coordination is available and cost-effective. (NS-PGL IB, 37.) Staff recommends the Commission order the Companies to do so. Staff agrees with CUB that the Commission should direct the Companies to expand the joint Multi-family program with ComEd, and further, that the Commission should reaffirm that the Companies should be implementing the programs jointly with ComEd. Plan 1 Order at 92.

VI. CONCLUSION

For the reasons set forth above Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Reply Brief.

Respectfully submitted,

_____/s/_____
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